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February 13, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *In the Matter of Biennial Regulatory Review-Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, WT Docket No. 03-264

Dear Ms. Dortch:

Sirius Satellite Radio ("Sirius"), by its counsel, hereby opposes¹ the proposal to measure power in the Wireless Communications Service ("WCS") band in terms of "average", rather than peak, power, which was introduced into the above-captioned proceeding² in the joint reply comments of XM Satellite Radio Holdings, Inc. ("XM") and WCS Wireless LLC ("WCS Wireless").³ As explained below, any change to WCS base station power limits or measurement procedures cannot be considered in the abstract, but instead must be examined as to its effect on the adjacent satellite digital audio radio service ("satellite DARS"). Moreover, other pending proceedings provide a more appropriate venue for Commission consideration of XM's and WCS Wireless' proposal. Accordingly, the Commission should reject XM's and WCS Wireless' request for a change in WCS base station power limits and delay any decisions regarding WCS power levels until these issues

¹ To the extent necessary, Sirius respectfully requests leave from the Commission to respond to issues raised by XM and WCS Radio in their joint reply comments. 47 C.F.R. §1.415(d). XM's and WCS Wireless' request is procedurally defective because it seeks to introduce a new issue in the reply comment round. Section 1.1415(c) of the rules only permits interested parties to file "comments in reply to the original comments." 47 C.F.R. §1.415(c).

² *Matter of Biennial Regulatory Review-Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 13,900 (2005) ("*Streamlining FNPRM*").

³ Joint Reply Comments of WCS Wireless LLC and XM Satellite Radio Holdings, Inc., WT Docket No. 03-264 (filed Jan. 17, 2006).

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can be considered in coordination with other intricately linked proceedings, as described below.

I. BACKGROUND

Sirius and XM are the two entities licensed to provide satellite digital audio radio service in the 2320-2345 MHz band. WCS Wireless is a licensee in the WCS 2305-2320 and 2345-2360 MHz bands, adjacent to both sides of the DARS spectrum. XM and WCS Wireless have submitted a pending application for transfer of control of WCS Wireless's spectrum rights to XM.⁴

The Commission initiated the present streamlining proceeding in response to CTIA's proposal to set mobile service power limits in terms of average, not peak, power, and to increase power ceilings to match.⁵ In addition to considering this proposal, the FCC also called for comment on possible power increases in other bands.⁶

If we adopt any or all of the proposed changes, should we implement them in other services, for example, Part 27 (700 MHz and/or Wireless Communications Services (WCS)), or Part 22 (Cellular)?⁷

None of the initial comments addressed 2.3 GHz WCS. However, in Joint Reply comments, XM and WCS Wireless recommended changing the measurement of base station power limits from peak to average for all

⁴ WCS Wireless, Inc. and XM Satellite Radio Holdings Inc. Application for Transfer of Control of WCS Licenses, File No. 0002240823, WT Docket No. 05-256 (July 15, 2005).

⁵ CTIA ex parte with attachment: EIRP Limits for PCS & AWS Base Stations 2002 Biennial Review Proceeding, WT Docket No. 03-264, at 7 (Feb. 8, 2006).

⁶ *Streamlining FNPRM*, 20 FCC Rcd at 13,930-931 (¶¶ 64-67).

⁷ *Id.*, 20 FCC Rcd at 13,925 (¶ 54).

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base stations regulated under Parts 24 and 27 of the Commission's rules, including those in the 2.3 GHz WCS.⁸

II. THE COMMISSION SHOULD NOT CHANGE THE WCS POWER MEASUREMENT METHODOLOGY OR INCREASE WCS POWER

The Commission should not measure WCS emissions by average, as opposed to peak, power nor should it increase WCS power as proposed by XM and WCS Wireless. Technical changes of this type affect adjacent spectrum users and modifications in one set of rules often must be mirrored in adjacent spectrum policies.

Indeed, in the current rulemaking, the Commission observed, "substantial changes to our radiated power rules may require consideration of how these changes may affect other related technical interference-limiting rules."⁹ According to the FCC, one size doesn't fit all:

We recognize that there may be concerns with applying the proposed changes to other services that may be less flexible than broadband PCS, or where there may be possible interference concerns to adjacent spectrum users.¹⁰

The record here does not support treating 2.3 GHz like wideband PCS. Both The Wireless Communications Association International, Inc. ("WCA") and Motorola, Inc. ("Motorola") cautioned that power limits and measurement techniques often are specific to the spectrum environment in each particular band. According to WCA,

⁸ Joint Reply Comments of WCS Wireless LLC and XM Satellite Radio Holdings, Inc., WT Docket No. 03-264 at 2, 4.

⁹ *Id.*, 20 FCC Rcd at 13,925 (¶ 53).

¹⁰ *Streamlining FNPRM*, 20 FCC Rcd at 13,925 (¶ 54). *See also id.*, 20 FCC Rcd at 13,930 (¶ 65) ("We seek comment on how such levels should also accommodate implementation of future technologies and current situations that may prove unusual or exceptional, without imposing undue regulatory burdens or unnecessary risks of harmful interference. . . What effect would increased radiated power have on the potential for harmful interference to adjacent spectrum users?").

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“maximum power limitations imposed on most services are the result of extensive consideration during notice and comment rulemaking proceedings and often reflect consideration of factors that may not be present with other services.”¹¹ Outside of broadband PCS and AWS, both Motorola and WCA concluded that modifying power limits or measurements should not be attempted absent affected licensees, so the agency can begin by “considering the nature of the incumbent uses the current rules are designed to protect.”¹²

Despite its last minute joint request with WCS Wireless, even XM agrees. Recognizing that amendments to Section 27.50(a) would impact the Sirius and XM satellite DARS networks equally, XM insisted (in July 5, 2005 joint comments with Sirius) that WCS rule revisions be tied to parallel amendments to satellite DARS regulations:

The Commission’s Part 27 regulation of WCS has always been premised on a careful balance between the interests and treatment of WCS and SDARS, and the Commission’s treatment of the two services should continue in parallel.¹³

XM’s subsequent flip-flop confirms its present positions no longer reflect the interests of millions of Americans in the satellite DARS audience.¹⁴

¹¹ WCA Comments on Further Notice of Proposed Rulemaking, WT Docket No. 03-264, at 2 (Dec. 19, 2005) (“WCA Comments”). *See also* Reply Comments of Motorola to the Further Notice of Proposed Rulemaking, WT Docket No. 03-264, at 4 (Jan. 17, 2005) (noting that “it is premature to adopt new power limitations in either the 2.5 GHz band or the 800 MHz”).

¹² Comments of WCA at 2.

¹³ Comments of Sirius Satellite Radio Inc. and XM Radio Inc., DA 05-1662, IB Docket No. 95-91, at 3 (July 5, 2005) (“Sirius/XM Joint Comments”).

¹⁴ XM’s abandonment of regulatory parity to support the unilateral change in WCS base station power levels is likely prompted by its decision to acquire WCS Wireless. *Application for FCC Consent to Transfer Control of WCS Wireless License Subsidiary, LLC From WCS Wireless, Inc. to XM Satellite Radio Holdings, Inc.*, DA 05-2272, WTB Docket No. 05-256 (Aug. 11, 2005). The proposed merger

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**III. OTHER, MORE APPROPRIATE, FORUM EXIST TO CONSIDER
CHANGING WCS TECHNICAL RULES**

The Commission should defer consideration of changes in WCS emission rules to other more appropriate forum. First, in May 2005, WCS Wireless requested a waiver of Section 27.50(a) of the FCC's rules in order to operate WCS base stations at "average" rather than "peak" maximum power levels.¹⁵ Second, a long-pending proceeding to finalize the service rules for satellite DARS terrestrial repeaters provides another opportunity to address WCS power levels.¹⁶ This crucial rulemaking has been delayed, but should now be refreshed and expanded to cover Part 27, with mandates to address *all* potential interference sources among satellite DARS and WCS, including the expected third order intermodulation interference from WCS base stations to satellite DARS consumer radios.

These proceedings incorporate a more complete record addressing the effect of changing from peak to average power limits, including the need for a conforming adjustments of satellite DARS power limits and measuring methods in Part 25. Indeed, as noted earlier, XM and Sirius requested just that in joint comments.¹⁷

(Continued . . .)

positions XM on both sides of the satellite DARS-WCS negotiations for addressing interference between terrestrial repeaters and WCS base stations, and allows XM the choice of supporting whichever side of the negotiation will best suit XM's economic needs in any given situation. Petition to Deny of Sirius Satellite Radio Inc. and Request For Removal From Streamlined Processing, WTB File No. 0002240823 and WTB Docket No. 05-256 (Aug. 3, 2005). As a result, the satellite DARS-WCS negotiations have terminated.

¹⁵ WCS Wireless, LLC, Amended Request for Waiver of Section 27.50 at 3 (May 16, 2005) (available on the FCC ULS application system) ("WCS Wireless Waiver Petition").

¹⁶ *Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Serv. In the 2310-2360 MHz Frequency band*, Report and Order Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 5754 (1997).

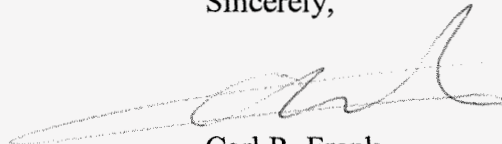
¹⁷ Sirius/XM Joint Comments at 2-3.

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IV. CONCLUSION

The FCC should reject XM's and WCS Wireless' request to change WCS power limit and measurement techniques in the context of this streamlining rulemaking. Whatever the merits of such a proposal, expanding this proceeding at this late date to cover the 2.3 GHz WCS service is the antithesis of the "streamlining" this docket is designed to provide. To ensure an equitable solution to the interference that will inevitably result from a change in the power levels of WCS base stations, Sirius urges the Commission to consolidate consideration of WCS measurement techniques or power level rules, as well as any transfer of control between WCS Wireless and XM, in a single proceeding, coordinated with and tied to the long-pending terrestrial repeater rulemaking. At least until terrestrial repeater rules are final, changes to WCS technical rules invariably will cause Sirius harmful interference and leave Sirius without a remedy in responding to this interference.

Sincerely,



Carl R. Frank
Counsel for Sirius Satellite Radio, Inc.

cc: (via e-mail)

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